



COUNTY OF SAN BERNARDINO  
STANDARD PRACTICE

NO 14-1.10

ISSUE 3/96

PAGE 1 OF 3

BY LOUIS HODNETT

EFFECTIVE 7/1/94

DEPARTMENT MENTAL HEALTH

SUBJECT

CONFIDENTIALITY GUIDELINES (REV 3/96)

APPROVED

JIM MCREYNOLDS, DIRECTOR

I. PURPOSE

To establish a procedure for the release of confidential materials by the Department of Mental Health.

II. POLICY

ALL MENTAL HEALTH PROGRAMS CONDUCTING TREATMENT WILL ADHERE TO THE LAWS AND REGULATIONS ON CONFIDENTIALITY as stated in California Welfare & Institutions Code and Federal Regulations Code 42.

III. DESCRIPTION OF LEGAL RESPONSIBILITY

A. These guidelines apply to all DMH and Contract employees under the jurisdiction of the San Bernardino County Department of Mental Health. This includes affiliated students, interns, and volunteer workers.

B. The main body of law on confidentiality is set forth in Sections 5328-5330 of the California Welfare and Institutions Code. If such information and records also contain information pertaining to the diagnosis or treatment of alcohol or drug abuse, additional restrictions may apply under federal regulations applicable to alcohol or drug records (42 CFR).

C. Patient information and records (including a patient's name, address and insurance data) must not be released unless they are clearly authorized within the guidelines which allow that release. Violation of the law concerning confidentiality subjects the person releasing the information to civil damages for the greater of the following amounts:

(1) Five hundred dollars (\$500)

(2) Three times the amount of actual damages, if any, sustained by the plaintiff as set forth in Welfare and Institutions Code 5330.

D. 1 a. In order to protect the privacy of the patient, all documents containing patient information and records are required to be stamped or preprinted as follows:

"CONFIDENTIAL PATIENT INFORMATION:  
See California Welfare and Institutions  
Code Section 5328"

1 b. Records which contain information about alcohol or drug abuse treatment will include the following statement:

This information has been disclosed to you from records that are confidential and protected by federal law.

Federal regulations (42 Code of Federal Regulations, part 2) prohibit you from making any

further disclosure of the records or information without specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for release of information is NOT sufficient for this purpose.

1 c. The use of the stamp informs the recipient of the document, as well as other persons who may thereafter gain access to the document, of their responsibility to maintain the confidentiality of the information set forth in the document.

2. Individuals who normally forward records or correspondence to individuals or facilities outside of the Department should always maintain a rubber stamp which may be ordered through Property Management.

E. The CA W & I Code and Federal Register Code 42 Volumes are maintained by the Office of the Chief of Medical Services.

1. To assist and protect staff members in observing the provisions of the law, the Department of Mental Health has designated the Medical Records Department in Building 4, 387-7210, to coordinate the release of all patient information. The office is the focal point for all procedures on release of patient information. Each treatment program shall have a person designated as the Patient Information clerk, to handle requests for information pertaining to current patients. This person must be knowledgeable of procedures, laws and regulations regarding confidentiality and will act as the representative of the Medical Record Department in releasing information for the clinic's patients. The Medical Record Supervisor and the Patient Information clerks, telephone extensions 387-7208, 387-7210, and 387-7209 will provide consultation and inservice training as necessary. All Subpoenas for medical records will be handled by the Medical Record Department, Building #4, 700 East Gilbert Street, San Bernardino. (see SPM 2-2.10, subpoena of medical records). The clinics will tell the "server" that the subpoena for records should be served at the Central Medical Record Section, Building 4, 700 East Gilbert Street, San Bernardino.

If the subpoena for records is accepted at the clinic, the clinic will hand deliver the subpoena and medical record to the medical record section within a few hours. Any questions regarding release of patient information may be directed to the Patient Medical Record or its representative. Detailed procedures are in the CAMP manual.

2. It should be noted that when copies of records maintained by the Department of Mental Health are sent to a federal agency, those records become a part of two separate systems of records (one at the state level, the other federal). The records retained in the state system of records remain subject to the state confidentiality requirement, as set forth in the Welfare and Institutions

Code Division 5, Section 5328. The records sent to the federal agency become subject to the provisions of the Federal Privacy Act of 1974.

Department staff members who release documents and records containing patient information to federal agencies are required to stamp the following notice on all documents to eliminate confusion of confidentiality:

"CONFIDENTIAL PATIENT INFORMATION CALIFORNIA  
WELFARE AND INSTITUTIONS CODE SECTION 5328  
INFORMATION SUBJECT TO RELEASE IN ACCORDANCE WITH  
FEDERAL PRIVACY ACT OF 1974 (PUBLIC LAW 93-579)

If the "Confidential" stamp is currently preprinted on the documents in use, it will be sufficient to overstamp all such documents submitted to federal agencies with:

"INFORMATION SUBJECT TO RELEASE IN ACCORDANCE WITH  
PROVISION OF THE FEDERAL PRIVACY ACT OF 1974 (PUBLIC LAW  
93-579)."

3. Special attention is directed to requests for patient information by ambulance companies or other nondepartment persons or companies who have provided potentially reimbursable services to a department patient. The same rules regarding confidentiality apply. NO INFORMATION will be released except as authorized by the patient or the patient's guardian or conservator or as authorized by the Welfare and Institutions Code.

LH:mlb

a:standard.pra  
disk7/wp5

## OATH OF CONFIDENTIALITY

I, the undersigned, hereby agree not to divulge any information or records concerning any client/patient without proper authorization in accordance with California Welfare and Institutions Code, Section 5328, et seq.

I recognize the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code and Title 9, California Administrative Code, as follows:

W & I Code, Section 5330: Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning the person in violation of the provisions of this chapter, for the greater of the following amounts:

- (1) Five hundred dollars (\$500.00);
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

Any person may, in accordance with the provisions of Chapter 9 (commencing with Section 525) of Title 7 or Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

It is not a prerequisite to an action under the section that the plaintiff suffer or be threatened with actual damages.

**Title 9, California Administrative Code, Section 942, Oath of Confidentiality.** All officers and employees of the Department collecting, maintaining and utilizing any patient data information in the course of their duties with the Department shall sign an Oath of Confidentiality.

As a condition of performing my duties as an officer or employee of the Department of Mental Health, I agree not to divulge to any unauthorized person any client/patient data information obtained from any facility by the Department.

I recognize that unauthorized release of confidential information may make me subject to a civil action under the provisions of the Welfare and Institutions Code, and may result in the termination of any office of employment.

I will treat the identity of clients and all personal information revealed by them with the expectation of confidentiality, and all information about them contained in the Department's client charts, computer files, and other records as confidential information unless otherwise authorized.

I will not seek to learn information about any client which is not necessary for my job functions, whether or not I intend to reveal the information, and I will seek to restrict access to medical record or computer-generated information about a client or a group of clients only to those employees who need the information to carry out their legitimate job functions.

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Place of Employment

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
COPY FOR EMPLOYEE PERSONNEL FILE